

Vaulting over the EU Regulatory Perimeter: A Closer Look at Lending Vaults

A CahillNXT Crypto Update on the Regulatory Treatment of Lending Vaults under MiCA and the EU Fund Management Regime

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EXECUTIVE SUMMARY

Few technology structures have risen as fast to prominence, or pose as many questions when superimposed over the EU rulebook, as blockchain-based vaults. Over the past few years, vaults have moved from a specialist liquidity deployment channel to the dominant way in which value is aggregated and put to work on public blockchains, with tens of billions of dollars now held in vaults built in accordance with a single technical standard (ERC-4626), and a market of professional “curators” has grown up around them. The legal question that follows is one that can hardly be said to have a straightforward answer: when a party designs, configures, and curates a vault into which members of the public place crypto-assets in exchange for yield, what, if anything, is it doing that falls within the EU financial regulation perimeter?

At a glance, three regulatory regimes could each, on their face, apply. A vault operator might be providing a crypto-asset service, and so require authorization as a crypto-asset service provider (a “CASP”) under the Markets in Crypto-Assets Regulation (“MiCA”).¹ Moreover, where a vault accepts a stablecoin that references a single currency, the operator might also run into MiCA’s prohibition on paying interest on e-money tokens (“EMTs”). Separately, because a vault pools capital from many users and pays them a proportional return, it bears at least a superficial resemblance to a collective investment fund, which brings both the Undertakings for Collective Investment in Transferable Securities (“UCITS”) Directive² and the Alternative Investment Fund Managers Directive (“AIFMD”)³ into view. Each regime was written for an intermediated world of custodians, exchanges, and fund managers exercising discretion over client assets, and none was written with an immutable smart contract in mind.

This article works through those three regimes in turn, as they apply to vault activity in general. Any conclusion reached herein is necessarily qualified since this is probably one of the areas in DeFi most

beset with legal nuances, and, as the final section explains, the European Commission has now reopened the very questions on which the current position depends. What follows is a reasoned structure of applicable legal interpretations to general vault implementations: a set of design features that, under the present state of law, tend to keep a vault outside the regulated perimeter, together with a clear sense of where that perimeter is most likely to move.

1. THE ANATOMY OF A VAULT: ERC-4626 AND ITS PROGENY

A vault, in the sense used here, is a smart contract that accepts a single underlying crypto-asset, issues the user a transferable token through which a proportional portion of the pool can be withdrawn, and deploys the pooled assets in some yield-generating strategy. The near-universal template is ERC-4626, the “Tokenized Vault Standard” finalized in March 2022, which defines a common interface, deposit and mint, withdraw and redeem, a share token, and functions that convert between assets and “shares,”⁴ so that any integrator can plug into any standard vault without bespoke code.⁵ Before the adoption of the standard, each yield protocol expressed the same economic idea in a slightly different way, and the resulting fragmentation made composability difficult; ERC-4626 turned vaults into a common building block. Adoption has been correspondingly broad, with aggregate value held in standard vaults across lending, staking, and tokenized-treasury products estimated in the region of twenty-five billion dollars by early 2026.⁶

The mechanics are worth stating plainly, because they carry through the whole examination that follows. A user that transfers assets to a vault receives vault shares that the user is able to transfer back to the vault for a proportional share of assets in the vault. Yield is expressed not as a payment but as an appreciating exchange rate between the share and the underlying assets, realized when the user exchanges shares for a larger quantity of the underlying than was originally contributed. Nothing is “paid” to the holder in the manner of interest on a deposit, a point that returns when the prohibition on interest for EMTs is reached below.

Two ERC standards widen the range of strategies a vault can house. ERC-7540, finalized in 2024, adds asynchronous entry and exit flows, so that a vault can accommodate strategies which cannot settle atomically, such as real-world-asset products with off-chain settlement, undercollateralized credit, or cross-chain positions.⁷ Separately, ERC-7575 extends the interface to multiple underlying assets. Neither changes the essential structure of a smart contract creating a proportional ability of the holder of a share token to withdraw assets from an aggregated “pool”, but the asynchronous variant is especially relevant for the fund assessment, because an exit that is queued and settled after a delay may look less like the on-demand redemption that characterizes an open-ended fund.

2. VAULT IMPLEMENTATIONS IN PRACTICE

The abstract description above takes form in a range of live implementations, which differ mainly in how much discretion sits with a human operator and how tightly that discretion is constrained. Three widely used designs can be said to mark out the span.⁸ Each of these designs builds on, rather than departs from, the ERC-4626 template: the standard fixes only the entry and exit interface and the share accounting, and it is the additional smart contracts layered on top, introducing further roles and functions such as strategy whitelists, curation, and allocation, that differentiate one implementation from another.

Vaults deployed on the Yearn V2 protocol, among the earliest designs of this kind, route a vault’s assets across a set of “strategies,” each an audited smart contract that pursues a particular yield source. Only through Yearn’s governance process can one approve a strategy or assign it a “debt ratio,” the share of the vault’s assets it may

withdraw, and “keeper” bots periodically harvest and compound the returns, while a guardian and an emergency-shutdown mechanism can recall capital if a strategy misbehaves. Discretion here is collective, in the sense that it is exercised through Yearn token-holder governance and multisig execution rather than by any single person, and confined to a whitelist of pre-coded strategies, which places the design toward the programmatic end of the spectrum.

Vaults deployed on Morpho sit a step further toward active curation. A vault allocates its assets across isolated, immutable lending markets,⁹ and authority is divided among four roles:

- a) an owner, which sets fees and assigns roles;
- b) a curator, which enables markets and sets supply caps and risk limits, subject to a timelock of at least twenty-four hours;
- c) an allocator, which moves assets among the enabled markets within those caps; and
- d) a guardian, or sentinel, which can veto or revoke a pending change and cut caps.

The curator shapes the vault’s risk profile but cannot exceed its caps, reach a market it has not approved, or seize user assets, and users may exit during the timelock. The lending focus is, however, a matter of configuration rather than architecture limitations: allocations run through curator-enabled adapters, and although those approved to date keep allocations within lending markets deployed on the Morpho Blue protocol, the character of any particular vault follows from what its curator chooses to enable.

Lastly, Enzyme serves as an example of how widely flexible vault infrastructure can be in terms of its applications. A vault owner configures a vault with a wide range of permitted policies (including the accepted assets, the eligible venues and integrations, and tolerances for value loss on trades) that the smart contract then enforces. Within that framework, configurations can range from vaults locked to a narrow set of whitelisted integrations and running a single automated routing strategy, which sit close to the curated model described above, to vaults whose owner, or the delegates the owner appoints, retains ongoing discretion to trade a portfolio across integrated venues. Where a given vault sits on that range is a function of its configuration rather than of the platform on which it is deployed.

These implementations together map a single spectrum, from pre-coded strategies under collective governance, through constrained curation over immutable markets, to active discretionary management. Which of those configurations falls within the regulated perimeter cannot be read off the spectrum alone, but it can be said that two features carry most of the weight in the assessment that follows. The first is the source of the pooled return: where the return consists of interest paid by borrowers, the activity resembles lending rather than investment, and that characterization does not change merely because the vault is actively curated. The second is the presence or absence of discretionary management: even a strategy that buys and sells tokens (as opposed to providing liquidity to lending markets) may fall outside the perimeter where allocation is fully automated and non-discretionary. Since this article is concerned with lending vaults, and given that the widest adoption of lending vaults to date has taken place on the Morpho protocol,¹⁰ the following sections examine in detail the role architecture employed on vaults deployed on the Morpho protocol.

3. CURATORS, ROLES, AND THE QUESTION OF CONTROL

As vaults evolved over the years and moved on from strictly pre-programmed logic execution, a distinct key role emerged: the vault “curator.” A curator selects the lending markets or strategies to which vault assets will be allocated, sets its risk parameters and exposure caps, and reallocates the pooled assets among approved strategies, in exchange for a performance fee on the yield generated; it is usually distinct from the party that markets or

distributes the vault to users. By early 2026 curators as a segment were curating vaults that hold several billion dollars of assets in total, with a handful of entities accounting for a large share of the market.¹¹ Because the curator is the most obviously active participant in an otherwise automated structure, it is the participant most likely to be scrutinized from a regulatory perspective.

Mature vault architectures address this by separating powers across defined roles and constraining each at the level of the smart contract. A common pattern distributes authority among an owner (administrative functions and role assignment), a curator (risk parameters and the selection of approved markets or strategies), an allocator (rebalancing within the curator's constraints), and a guardian or sentinel (a veto over pending changes). Changes to the risk-defining parameters are typically subject to a timelock, a delay of anywhere from a day to two weeks between proposal and effect, during which the guardian may veto the change and, more importantly, users may exit before it takes hold. It is worth noting that supply caps set by the curator cannot be exceeded, the allocator cannot direct assets to markets the curator has not approved, and none of the roles can extract assets from the vault or move them to an arbitrary address.

It is on the basis of this architecture that vaults are described as “non-custodial,” and the description is, as far as it goes, accurate: the user signs each transaction from their own wallet, the assets rest in a smart contract rather than on an operator's balance sheet, the share token is freely transferable, and the user can ordinarily exit without anyone's permission. Some designs go further, offering a forced or permissionless withdrawal path that functions even if the curator becomes uncooperative.¹² In some instances, however, the “non-custodial” label may do more work than it can comfortably bear. A curator can select the oracle on which a market relies, admit new adapters or strategies, and set the parameters that determine risk, and in doing so it can exercise influence over the user's economic outcome, even where it can never abscond with the assets; moreover, upgradeable proxy patterns and administrative keys can reintroduce discretion that the “immutable” framing appears to exclude. Just as importantly, the practical ability to withdraw is only as good as the liquidity of the underlying strategy—a limit made vivid by the stress in decentralized credit markets in November 2025, when the freezing of withdrawals at a large yield protocol and the depegging of several synthetic dollars drove a number of curated stablecoin vaults to full utilization and left users, for a period, unable to exit at all.¹³ The safer formulation is that “non-custodial” describes the absence of any ability to misappropriate assets, not the absence of control over how they are deployed.

4. A TAXONOMY OF VAULTS, AND WHY YIELD SOURCE MATTERS

It is difficult to group vaults under one umbrella, and the regulatory implications depend heavily on which kind is in question; the source of the yield also tends to play an important role in how the activity is characterized:

- a) In a lending or credit vault, the pooled assets are supplied to separate lending markets where borrowers post collateral and pay interest, so the vault earns interest on the supplied assets and is exposed to borrower default and collateral volatility.
- b) A yield aggregator, or auto-compounder, does not itself lend or stake; it allocates the pooled assets to yield-bearing products offered by other protocols and automatically redeploys the returns as they accrue, so its yield, and its risk, are whatever those underlying venues produce.
- c) Liquid staking and restaking vaults hold liquid staking tokens representing assets staked to secure a network, or restaked to secure additional services, and pass through the resulting rewards.
- d) Delta-neutral, or basis-trade, vaults pair a spot holding with an offsetting derivatives position and capture the funding rate between the two.

- e) Real-world-asset and tokenized-treasury vaults hold short-dated government securities and pass through the coupon.
- f) Options and structured-product vaults sell options and collect the premiums, which accrue to the vault and are typically reinvested rather than paid out, while liquidity-management vaults deploy assets into automated market makers and earn trading fees.
- g) Lastly, a growing category of curated multi-protocol platforms combines several of these strategies within a single wrapper.

As mentioned at the outset, EU law does not regulate “vaults”; it regulates activities and instruments, and the same container can house activities that fall on opposite sides of the regulated line. Where the yield is generated from interest payments made by borrowers, the vault is, in substance, a lending arrangement, and lending sits outside MiCA, as explained below. Where the yield is generated from the appreciation of a portfolio of assets acquired, held, and sold for gain, the vault could look more like collective investment, which is the province of the fund directives. An option premium or a funding rate sits between the two, and may raise questions about derivatives and financial-instrument status that are beyond this article. What follows takes the lending vault as its principal example, both because it is the largest category by value and because it is the one on which the favorable reading is strongest.

5. VAULTS AND THE CASP PERIMETER

MiCA defines a crypto-asset service provider as an undertaking whose business is the provision of one or more crypto-asset services to clients on a professional basis.¹⁴ The gateway that matters, however, is the definition of “crypto-asset service” itself, which is a closed and exhaustive list of ten activities.¹⁵ A vault operator is caught only if what it does falls within one of those ten; if it does not, no amount of professionalism or sophistication brings it within the regime.

The service most often raised is the provision of custody and administration of crypto-assets on behalf of clients, defined as the safekeeping or controlling, on behalf of clients, of crypto-assets or of the means of access to them, in the form of private cryptographic keys where applicable.¹⁶ The threshold difficulty is that, in a well-designed vault, no such service is offered at all: the user retains their own keys and self-custodies throughout, and the operator supplies configuration rather than safekeeping. It never holds a user’s private keys, and it cannot move a user’s assets other than within the constrained allocation logic described above, so there is nothing that it obviously “safekeeps.” The harder word is “controlling,” and here the position is more nuanced. An operator that rebalances pooled assets among markets does more than passively hold a parameter, yet it does considerably less than exercise discretionary control, because it operates within caps it cannot exceed, can reach only destinations pre-approved through a timelocked and vetoable process, and cannot prevent a user from withdrawing. The more reasonable reading is that this constrained operational role is closer to the configuration of a protocol than to the control of client assets, though the point is not free from doubt, and a competent authority could take a different view where the operator’s discretion over strategy selection is wide.

The remaining services are more readily distinguished, and each falls away for a reason of substance. The operation of a trading platform is defined as managing a multilateral system that brings together third-party purchasing and selling interests so as to result in contracts, whether crypto-for-funds or crypto-for-crypto.¹⁷ A lending vault matches no buyers with sellers; it supplies liquidity to borrowers who post collateral and undertake to repay, creating debt obligations rather than transfers of ownership, and the deliberate choice of the words “purchasing and selling” tells against extending the definition to lending. The two exchange services turn on the conclusion of purchase or sale contracts using proprietary capital,¹⁸ which a vault operator that neither buys nor

sells against its users does not do. Execution of orders,¹⁹ and reception and transmission of orders,²⁰ each require an order to purchase or sell, which a user placing assets into an automated strategy never gives. Providing advice requires a personalized recommendation to a client,²¹ which the publication of standardized vault parameters is not. Lastly, transfer services require the transfer of crypto-assets on behalf of a client from one address to another,²² which does not describe a user who moves their own assets by signing their own transactions.

Arguably, portfolio management is the service a vault most resembles at a distance. MiCA defines it as managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis;²³ the definition nonetheless contains three elements that a vault of pooled assets does not satisfy. There is usually no client-specific mandate, since typically users do not each appoint the operator to manage a portfolio on their behalf. As a result, there is no client-by-client management either, because every user of the same vault is treated identically, their assets pooled and allocated by a uniform strategy rather than tailored to individual objectives. Just as importantly, the operator's authority, though it involves choices, is bounded by encoded parameters rather than amounting to full discretionary decision-making. The very feature that at a glance makes a vault look fund-like—for the purposes of the next section—is what places it outside portfolio management here: its pooled and standardized character.

Two structural features of MiCA reinforce all of this. The first is that MiCA does not regulate the lending and borrowing of crypto-assets, a point often attributed to Recital 94, which states that the Regulation “should not address the lending and borrowing of crypto-assets, including e-money tokens, and therefore should not prejudice applicable national law,” and that “the feasibility and necessity of regulating such activities should be further assessed.”²⁴ The recital is confirmatory rather than constitutive: lending falls outside MiCA not because a recital excludes it, since a recital cannot by itself carve an activity out of an operative regime, but because lending is simply absent from the closed list of ten crypto-asset services to which the authorization requirement in Article 59(1) attaches. That reading is reinforced by an operative provision, Article 142, which directs the Commission to assess “the necessity and feasibility of regulating lending and borrowing of crypto-assets,” language that presupposes the activity is unregulated today.

The second feature is MiCA's treatment of decentralized arrangements, which, again by recital, provides that services offered in a fully decentralized manner without any intermediary fall outside the Regulation, and that crypto-assets with no identifiable issuer fall outside its issuance titles, though a CASP providing services in respect of them remains covered.²⁵ A vault whose operation is genuinely automated, and whose operator confines itself to constrained configuration, sits comfortably within the spirit of that carve-out, despite the carve-out being expressed in a recital rather than in an article.

There is, however, one final point worth making regarding regulatory perimeters. Falling outside MiCA's harmonized scope is not the same as falling outside regulation altogether. MiCA expressly leaves applicable national law on the lending and borrowing of crypto-assets untouched, so a Member State remains free to regulate crypto lending, consumer credit, or cognate activity at national level; and the fund directives considered below take effect only as transposed into national law, which means that the operative requirements, and any national gold-plating, are ultimately those of each Member State in which a vault is made available. It is worth remembering that this article addresses the harmonized EU position, not the full range of national rules that a given structure may still engage.

6. THE INTEREST PROHIBITION IN RELATION TO STABLECOIN VAULTS

A large share of vault activity is denominated in stablecoins, and the most widely used dollar stablecoins qualify under MiCA as EMTs, being crypto-assets that purport to maintain a stable value by referencing the value of a single official currency.²⁶ That brings into consideration MiCA's prohibition on granting interest, under which

issuers of EMTs may not grant interest in relation to them, and, separately, crypto-asset service providers may not grant interest when providing crypto-asset services related to EMTs, with any benefit tied to the length of time a holder holds the token treated as interest.²⁷ An identical prohibition also applies to asset-referenced tokens.²⁸

For a vault operator the prohibition is unlikely to apply, for reasons that stack. First, the operator is not the issuer of the stablecoin, so the first limb does not apply. Second, the CASP limb applies only where a CASP is “providing crypto-asset services related to e-money tokens,” so it depends on the operator being a CASP in the first place; if the analysis in the previous section holds and the operator provides none of the ten listed services, the limb has nothing to attach to. Third, even an operator that is a licensed CASP is not necessarily caught: since the lending and borrowing of crypto-assets fall outside MiCA altogether, a CASP that merely operates a lending vault is not, in that activity, “providing crypto-asset services” at all, so there is a tenable argument that it may pay yield on the EMTs held in the vault without breaching the prohibition.

Even setting those arguments aside, the yield in a lending vault is not “granted” by the operator at all. It is borrower-paid interest, which accrues through the market’s own mechanics and is expressed, as noted above, as an appreciating exchange rate rather than a payment; the operator configures the arrangement but neither pays a return out of its own resources nor sets a rate to reward holding. The interest, if it is granted by anyone, is granted by borrowers to lenders, with the operator supplying the infrastructure. There is a respectable argument that yield arising from lending, an activity MiCA leaves outside its scope, cannot sensibly be caught by a prohibition that operates within that scope.

There is one qualification worth stating, however. Where the stablecoin issuer itself, or a party acting for it, runs an incentive program that rewards holders for holding the token or for placing it in particular venues, the position could change vis-a-vis the issuer rather than the vault. Such a program, if it rewards duration of holding, could be seen as sitting close to the core of what Article 50 prohibits, and whether a given campaign is caught turns on whether the benefit is tied to holding, which is more clearly within the prohibition, or to a distinct activity such as supplying liquidity, which is more readily distinguished. A vault that passively benefits from higher yields because an issuer has chosen to incentivize its token still is not itself granting anything, and any exposure would likely rest with the issuer running the program.

7. CAN VAULTS BE DEEMED AS FUNDS UNDER THE UCITS DIRECTIVE?

Given that a vault pools capital and distributes a proportional return, any competent legal assessment should consider the two applicable fund directives in the EU, and the UCITS Directive is the easier of the two to dispose of. A UCITS is defined as an undertaking with the sole object of collective investment, in transferable securities or in other liquid financial assets, of capital raised from the public, which operates on the principle of risk-spreading, and whose units are, at the request of holders, repurchased or redeemed out of the undertaking’s assets.²⁹ Each limb of the definition actually tells against a lending vault.

The eligibility limb is decisive from the outset. A UCITS may invest only in a closed list of eligible assets, essentially transferable securities and money-market instruments admitted to trading, units of other UCITS, deposits with credit institutions, and financial derivative instruments.³⁰ A lending vault typically holds none of these; it holds lending positions—that is, supplied liquidity accruing interest—usually secured by crypto-collateral such as wrapped ether or bitcoin falling under the purview of MiCA rather than that of MiFID II; that is, the collateral would not qualify as a UCITS-eligible asset. The activity is therefore not “collective investment” in eligible assets at all. The redemption limb points the same way, and incidentally so does the stress of November 2025: a UCITS must offer redemption at net asset value on demand out of the fund’s own assets, whereas a vault user exits through the smart contract, and the exit can only be completed to the extent the underlying strategy is liquid. Lastly, the

structure also lacks the authorized management company and the mandated diversification that the regime assumes. It follows, with a fair degree of confidence, that a lending vault is unlikely to constitute a UCITS.

8. THE BROADER AIF QUESTION: CAN VAULTS FALL OUTSIDE THE AIFMD?

The alternative investment fund regime poses the harder question, and it is harder due to the broader definition of an AIF compared to that of a UCITS. An AIF is defined as a collective investment undertaking that raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and that does not require authorization as a UCITS.³¹ Because the second limb is a UCITS-authorization test rather than a fresh eligibility test, the AIF category is residual: an arrangement that is a collective investment undertaking but cannot be a UCITS, as most crypto vehicles cannot, falls to AIFMD by default. There is no crypto carve-out in AIFMD, and the directive is indifferent to legal form, applying whether the vehicle is a company, a trust, or has “any other legal form.” The whole weight of the question therefore falls on the threshold issue of whether a vault is a “collective investment undertaking” at all.

The governing guidance is ESMA’s 2013 Guidelines on key concepts of the AIFMD, under which an undertaking is a collective investment undertaking only where it exhibits, cumulatively, three characteristics:

1. it does not have a general commercial or industrial purpose;
2. it pools capital raised from investors for the purpose of investment, with a view to generating a pooled return; and
3. its unitholders, as a collective group, have no day-to-day discretion or control.³²

Since the test is cumulative, the absence of any one characteristic takes the arrangement outside the definition. Arguably, the second characteristic is the most instructive, specifically regarding the word “investment.” ESMA defines the “pooled return” the undertaking must pursue as one “generated by the pooled risk arising from acquiring, holding or selling investment assets,” and it has since reinforced the point in its 2025 Guidelines on the qualification of crypto-assets as financial instruments, which state that a crypto-asset qualifies as a unit in a collective investment undertaking only where it aims to provide “a pooled return, which is generated by the pooled risk arising from acquiring, holding or selling of the underlying investment assets.”³³

A lending vault does not naturally fit that description. Its return is not generated by acquiring, holding, or selling investment assets for gain; rather, it is generated by supplying liquidity to borrowers and collecting interest, which is credit extension rather than investment, and the user’s dominant risk is borrower default rather than the market performance of a portfolio. That MiCA itself treats lending as a separate activity, outside its scope, reinforces the reading that lending is not “investment” for these purposes. The defined-investment-policy element cuts the same way, since ESMA’s indicators of such a policy contemplate a document, binding on the manager and enforceable by investors, that fixes an investment strategy, whereas a vault is governed by encoded risk parameters that the operator can change only through a timelocked and vetoable process, and that the user can escape by withdrawing. The day-to-day-control element is more equivocal: ESMA asks whether investors “as a collective group” lack control, and vault users, though individually free to withdraw and to exit ahead of parameter changes, do not collectively direct the strategy. On balance this characteristic is likely present, and it can be the one on which a regulator inclined to find an AIF would press hardest.

There are several further features that reinforce the distinction, though none is decisive alone:

- a) A vault mints a standardized share token that is exchangeable directly for a portion of the pooled assets through the smart contract's own mechanics, rather than a unit representing an indirect beneficial interest in a fund vehicle that itself holds legal title;
- b) Its operations run within encoded constraints rather than by the discretionary judgment of a manager; and
- c) It has no single entity performing the functions that AIFMD assigns to the alternative investment fund manager, which every AIF must appoint and which bears responsibility for portfolio management, risk management, and valuation.³⁴

A note of caution is nonetheless in order, because the direction of travel in ESMA's 2025 guidance is worth noting: ESMA states in terms that, in assessing collective management, "it is not relevant whether decisions are made by humans, code/algorithms, or smart contracts as long as those decisions are in strict adherence to the established investment policy." Automation, in other words, is not by itself an answer; a vault that pooled capital to acquire and manage a portfolio of investment assets for gain would not escape the fund regime merely because a smart contract did the managing. The lending vault's escape route runs through the nature of its activity—credit rather than investment—and not through the fact that it is automated. For the same reason, active curation should not, without more, convert a lending vault into a collective investment undertaking: the curator's engagement, however continuous, concerns the parameters of credit extension and leaves the source of the pooled return unchanged.

A curator concerned to strengthen its position has one especially effective step available: to narrow its own operational role. The most direct means is to ensure that the highest-privilege administrative functions, the owner role in the taxonomy set out above, sit with a separate party rather than with the curator, so that the curator confines itself to constrained risk configuration and resembles a limited technical service provider rather than the discretionary manager of a collective investment. That is a matter of structuring rather than a change in the law, but it is the kind of design choice on which the classification can, at the margin, turn.

9. THE PERIMETER UNDER REVIEW

Despite the sound and reasoned arguments made throughout this article, it is worth remembering that *"The best-laid schemes o' mice an' men / Gang aft agley [go often awry]."*³⁵

Earlier this year, the European Commission reopened the questions on which this reading depends. In May 2026 it published a targeted consultation on the review of MiCA, which we have covered under a separate client alert.³⁶ It asks whether the lending and borrowing of crypto-assets, "currently not addressed in MiCA," should be regulated, and, if so, on what terms; it also devotes a section to decentralized finance, canvassing the criteria by which an arrangement might be judged not "fully decentralized," whether CASPs should have to conduct due diligence on the protocols to which they connect clients, and, most concretely, whether protocols that are not fully decentralized should be certified in place of holding a full CASP license. Lastly, it reopens the interest prohibition, asking whether the bar on paying interest on EMTs and asset-referenced tokens should be modified.

That these questions are being asked at all is telling. The EBA and ESMA delivered their joint report under Article 142, canvassing decentralized finance and the crypto lending, borrowing, and staking markets, in January 2025.³⁷ The Commission's own report to the Parliament and Council, which that report was meant to inform and which was due by the end of 2024, has yet to appear. The European Parliament, in an own-initiative resolution in July 2026, has called on the Commission to assess whether crypto lending, borrowing, staking, and decentralized finance should be brought within the perimeter.³⁸

It is worth noting that the targeted consultation is not law, and none of it is yet even a proposal; a consultation is a set of questions, and the Commission has been careful to say that it prejudices nothing. The direction of travel is

nonetheless unmistakable, and it bears on how a vault should be built today. A structure whose regulatory treatment depends on the present boundaries of the lending exclusion and the decentralization carve-out is a structure exposed to the risk that those boundaries move, and the prudent course is to design for durability rather than for the present letter of the rules.

CONCLUSION

For a well-designed vault, the reasonable conclusion is indeed a favorable one that sits on solid interpretative grounds: a lending vault operated by a curator whose role is confined to constrained configuration is unlikely to require authorization as a CASP, unlikely to fall foul of the prohibition on interest for EMTs, and unlikely to constitute a UCITS or an AIF. That conclusion, however, is a function of design, and the features that carry it are, in effect, determinative for its regulatory classification. The architecture should be genuinely non-custodial, in the sense that the operator can neither hold the user's keys nor prevent withdrawal, and it should ideally offer a withdrawal path that survives the operator's non-cooperation. Moreover, the operator's role should be bounded by encoded caps, timelocks, and vetoes, so that what it exercises is configuration rather than discretion, with the highest-privilege functions placed with a party other than the curator. As for the provenance of the yield, this should arise from lending, or a comparable activity outside MiCA, rather than from the acquisition and management of a portfolio for gain, since it is the character of the activity, not the fact of automation, that most cleanly keeps a vault clear of the fund regime. Lastly, the arrangement should be documented as what it is: a limited technology and risk-configuration service, rather than as discretionary management of pooled investments.

However, two cautions close the discussion. This article covers only the lending vault; a delta-neutral, options, or portfolio-appreciation vault raises materially different questions, some of which engage the definition of a financial instrument and none of which this article addresses. Moreover, the arguments laid out above are drawn on ground the Commission has now begun to survey, so a party building to it should treat the current position as a starting point to be monitored, not a settled entitlement. So far, the lending vault has outrun the rulebook written for the intermediated world that preceded it; the coming revision of MiCA will likely begin to close that gap, and the structures that fare best will be those built with the direction of travel, and not merely the present text, in view.

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The CahillNXT team advises curators, protocols, distributors, issuers, and institutional participants on the regulatory treatment of vaults and other decentralized-finance structures under MiCA and the EU fund-management regime, and on the preparation of responses to the Commission's review, and would be glad to discuss how any of the matters addressed above may bear upon a particular structure. If you have any questions about the issues addressed in this article, or would like a copy of any of the materials mentioned in it, please do not hesitate to call or email author Jonathan Galea (partner) at +44.20.7947.9315 or jgalea@cahill.com, or email publicationscommittee@cahill.com.

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- 1 Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets (“MiCA”), OJ L 150/40.
- 2 Directive 2009/65/EC on the coordination of laws relating to undertakings for collective investment in transferable securities (the “UCITS Directive”).
- 3 Directive 2011/61/EU on Alternative Investment Fund Managers (the “AIFMD”).
- 4 The term “share” is used in the technical sense given to it by the ERC-4626 standard, that is, an ERC-20 token recording a proportional position in a pooled smart contract. It does not denote a share in the corporate or company-law sense, nor a share, unit, or other security within the meaning of EU securities or fund legislation, and nothing in this article should be read as treating vault “shares” as such.
- 5 ERC-4626, “Tokenized Vault Standard” (Ethereum Improvement Proposal, finalized 2 March 2022) <https://eips.ethereum.org/EIPS/eip-4626> accessed 22 July 2026.
- 6 Aggregate figure drawn from public analyses of value held in ERC-4626-compliant vaults across lending, staking, and tokenized-treasury products as of early 2026; figures of this kind are indicative and vary by source and methodology.
- 7 ERC-7540, “Asynchronous ERC-4626 Tokenized Vaults” (finalized 2024) <https://eips.ethereum.org/EIPS/eip-7540> accessed 22 July 2026; ERC-7575, “Multi-Asset ERC-4626 Vaults” <https://eips.ethereum.org/EIPS/eip-7575> accessed 22 July 2026.
- 8 Sources for the implementations described in this section: Yearn, “Yearn Vaults (v2) Specification” <<https://docs.yearn.fi/developers/v2/SPECIFICATION/>>; Morpho, “Roles & Capabilities” <<https://docs.morpho.org/curate/concepts/roles/>>; Enzyme, “Enzyme Vaults” <<https://enzyme.finance/enzyme-vaults/>>; all accessed 23 July 2026. Role names, timelock minimums, and other parameters are set by each protocol’s contracts and vary by version.
- 9 The immutability extends to the base protocol: the core lending smart contract is not upgradeable, deployed markets cannot be halted or modified by any party, and the powers of Morpho governance are limited to whitelisting new interest-rate models and loan-to-value options for future markets, activating a fee switch capped at 25% of borrower interest, and setting the fee recipient. No pause function exists at the protocol level, although optional per-vault gate smart contracts, where configured by a curator, can restrict entry, withdrawals, or share transfers. See Morpho, “Morpho Governance” <<https://docs.morpho.org/learn/governance/organization/>> and “Morpho Vault V2” <<https://docs.morpho.org/learn/concepts/vault-v2/>>, both accessed 27 July 2026.
- 10 Indicative figures as of mid-2026: of the value held in curated lending vaults, the largest share sits in vaults deployed on Morpho. See the DeFi vaults data maintained by DIA <<https://www.diadata.org/map/defi-vaults-lending/>> and the protocol data maintained by DefiLlama <<https://defillama.com/protocol/morpho>>, both accessed 28 July 2026; figures of this kind vary by source and methodology.
- 11 Estimates of assets under curation vary by source and methodology; figures in the region of six to seven billion US dollars, with the five largest curators accounting for roughly two-fifths of the segment, have been reported for early 2026. See, for example, Chorus One, “DeFi Curators in 2025: Navigating Chaos, Building Resilience,” and the DeFi vaults data maintained by DIA.
- 12 Such as the *forceDeallocate* function.
- 13 The reference is to the stress in decentralized credit markets in November 2025. On 3 November 2025 the yield protocol Stream Finance froze deposits and withdrawals following disclosure of a loss of approximately USD 93 million by an external manager, and its yield-bearing token xUSD depegged sharply; the shock spread to other synthetic dollars, including Elixir’s deUSD and Stables Labs’ USDx, and drove a number of curated lending vaults to full utilization, leaving users temporarily unable to withdraw. Outcomes varied markedly by curator. See contemporaneous reporting of the episode in November 2025 and analyses of the curated-vault segment, including Chorus One, “DeFi Curators in 2025: Navigating Chaos, Building Resilience.”
- 14 MiCA, Article 3(1)(15).
- 15 MiCA, Article 3(1)(16). The list comprises: custody and administration; operation of a trading platform; exchange of crypto-assets for funds; exchange of crypto-assets for other crypto-assets; execution of orders; placing; reception and transmission of orders; advice; portfolio management; and transfer services.
- 16 MiCA, Article 3(1)(17).
- 17 MiCA, Article 3(1)(18).
- 18 MiCA, Article 3(1)(19) (exchange of crypto-assets for funds) and Article 3(1)(20) (exchange of crypto-assets for other crypto-assets).
- 19 MiCA, Article 3(1)(21).
- 20 MiCA, Article 3(1)(23).
- 21 MiCA, Article 3(1)(24).
- 22 MiCA, Article 3(1)(26).
- 23 MiCA, Article 3(1)(25) (in the definitions, “providing portfolio management of crypto-assets”; the service is listed at Article 3(1)(16)(i) as “providing portfolio management on crypto-assets”).
- 24 MiCA, Recital 94.

25 MiCA, Recital 22.

26 MiCA, Article 3(1)(7). USDC is issued in the EU by a MiCA-authorized electronic money institution and is treated as an EMT.

27 MiCA, Article 50; and, for the rationale, Recital 68.

28 MiCA, Article 40.

29 UCITS Directive, Article 1(2).

30 UCITS Directive, Article 50(1); see also Article 50(2) (limiting investment in non-eligible transferable securities and money-market instruments to 10% and prohibiting the acquisition of precious metals).

31 AIFMD, Article 4(1)(a).

32 ESMA, "Guidelines on key concepts of the AIFMD" (ESMA/2013/611, 13 August 2013), paras 12 (collective investment undertaking), 13 (raising capital) and 20 (defined investment policy), and Section II (definitions of "day-to-day discretion or control" and "pooled return").

33 ESMA, "Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments" (ESMA75453128700-1323, 19 March 2025), para 41 (Guideline 4); the passage on automation quoted below appears at para 39.

34 AIFMD, Article 5 (obligation for each AIF to have a single AIFM).

35 Robert Burns, "To a Mouse, on Turning Her Up in Her Nest with the Plough, November 1785" (1785).

36 European Commission, "Targeted Consultation on the Review of the Regulation on Markets in Crypto-Assets (MiCA)" (20 May 2026, responses due 30 September 2026), Part 4 (policy areas beyond the current scope of MiCA). The consultation and its implications are examined in J. Galea, "MiCA, the Sequel: Brussels Reopens the EU Crypto Rulebook" (CahillNXT, 18 June 2026) <https://www.cahill.com/publications/client-alerts/2026-06-18-mica-the-sequel-brussels-reopens-the-eu-crypto-rulebook>.

37 EBA and ESMA, "Joint Report on recent developments in crypto-assets (Article 142 of MiCAR)" (16 January 2025) ESMA75-453128700-1391 <<https://www.esma.europa.eu/document/joint-eba-esma-report-recent-developments-crypto-assets-article-142-mica>> accessed 23 July 2026.

38 European Parliament resolution of 7 July 2026 on digital assets and the competitiveness and integrity of the Union's financial system (own-initiative); the Commission's report under MiCA Article 142 remained outstanding as of the date of this article.